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Technology Center 3600

Application No. 09/282,747
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#35

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Application No.: 09/282,747

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For: METHOD AND APPARATUS FOR
PROVIDING CROSS-BENEFITS
BASED ON A CUSTOMER
ACTIVITY

)
) Group Art Unit: 3622
)
) Examiner: Khanh Le
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) APPEAL BRIEF
)
) Attorney Docket No. 99-007
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BOARD OF PATENT APPEALS
AND INTERFERENCES

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Appellants hereby appeal to the Board of Patent Appeals and Interferences from the
decision of the Examiner in the Final Office Action mailed November 19, 2002 (Paper No. 33),
rejecting claims 1 - 42, 49 - 65, 72 - 78, 80 and 81.

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APPENDIX A: CLEAN COPY OF CLAIMS INVOLVED IN THE APPEAL

APPENDIX B: INDEPENDENT CLAIMS INVOLVED IN THE APPEAL

APPENDIX C: CHART SHOWING CLAIM DEPENDENCIES

REAL PARTY IN INTEREST

The present application is assigned to Walker Digital, LLC, 1177 High Ridge Road, Stamford, CT 06905.

RELATED APPEALS AND INTERFERENCES

Appellants are not aware of any appeals which might be considered to directly affect, be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1 - 42, 49 - 65, 72 - 78, 80 and 81 are pending in the present application.

Claims 1 - 42, 49 - 65, 72 - 78, 80 and 81 and are being appealed. Pending claims 37 - 40 and 57 - 59 are not being appealed.

Claims 1, 3, 4, 8 - 16, 20, 21, 28 - 31, 33 - 36, 51 - 56, 75 and 76 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,721,827 to Logan.

Claims 4, 17 - 19, 32, 41, 42, 60 - 65, 77, 78 and 81 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Logan.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of Logan and "Can mixing 'cookies' with online marketing be a recipe for heartburn", by Ed Foster, InfoWorld, July 22, 1996, v18n30, page 54 (the "Cookie article").

Claims 5 - 7, 37, 38, 49, 50, 57 - 59, 72 - 74 and 80 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of Logan and U.S. Patent No. 5,537,314 to Kanter.

Claims 39 and 40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of Logan, Kanter and U.S. Patent No.6,049,778 to Walker.

Claims 22 - 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over a combination of Logan and "Credit card firms drive down costs", by Stephen Ellis, Times Newspaper Limited, Sunday Times, Feb. 27, 1994 ("Ellis").

STATUS OF AMENDMENTS

No amendments were filed subsequent to final rejection.

SUMMARY OF INVENTION

Generally, according to one aspect of the invention, (Present Application, Summary of the Invention, page 3) a controller receives information relating to customer activity with a first vendor, typically via a Web page that a customer accesses. The controller further receives an indication of items (goods and/or services) the customer desires to purchase, the items having an associated total price. The controller determines, based on any of various criteria, whether to provide an offer for a subsidy based on the information relating to customer activity. For example, a customer who places certain items in his virtual "shopping cart" may receive such an offer. The offer for a subsidy is from a second vendor (a subsidizing vendor), and may define, for example, a reduction in the price charged for the item and an obligation for the customer to fulfill in exchange for the subsidy. For example, the customer may be obliged to sign up for a credit card or telephone service provided by the subsidizing vendor.

An indication of the offer for the subsidy is provided to the customer, e.g., via a text or graphical display on the Web page. The customer responds via known user interface techniques and, if he accepts the offer, he is charged a second price for the items. The second price is less than the total price, and may even be zero. Thus the customer may get his desired items for a low price or for free in exchange for, e.g., fulfilling the obligation with the subsidizing vendor.

ISSUES

Whether claims **1, 3, 8 - 16, 20, 21, 28 - 31, 33 - 36, 51 - 56, 75 and 76** are anticipated by Logan.

Whether claims **4, 17 - 19, 32, 41, 42, 60 - 65, 77, 78 and 81** are obvious in light of Logan.

Whether claim **2** is obvious in light of a combination of Logan and the Cookie article.

Whether claims **5 - 7, 37, 38, 49, 50, 57 - 59, 72 - 74 and 80** are obvious in light of a combination of Logan and Kanter.

Whether claims **39 and 40** are obvious in light of a combination of Logan, Kanter and Walker.

Whether claims **22 - 27** are obvious in light of a combination of Logan and Ellis.

GROUPING OF CLAIMS

The claims in different groups do not stand and fall together.

Appellants group the pending claims as follows:

Group I - claims **1 - 21, 28 - 36, 51 - 56, 75 and 76**

Group II - claims **41, 42, 60 - 65, 77 and 78**

Group III - claim **81**

Group IV - claims **49, 50, 72 - 74 and 80**

Group V - claims **22 - 27**

Appellants believe that claims in different groups are separately patentable, as explained below.

ARGUMENT

Summary of Argument

All rejections are based on Logan. Specifically, the rejections rely on two alternative interpretations of Logan offered by the Examiner. Both interpretations are plainly contrary to the explicit disclosure of Logan, which completely fails to suggest several limitations that are recited in the independent claims.

Among other failings, Logan completely lack any hint of:

- *providing an offer after customer activity with the vendor, the offer being generally for a reduction in price of an item the customer is to purchase.*

(independent claims 1, 36, 41, 42, 49, 81)

- during the same "transaction", *receiving customer activity* (or independent of item customer purchased), *providing an offer AND ALSO charging* for the item (or crediting or receiving a credit card identifier or providing item for free or selling item for lower price)

(all independent claims)

Accordingly, the rejections are inappropriate and Appellants respectfully request that the rejections be reversed.

Form of this Appeal Brief

In the arguments herein, limitations of the claims are indicated in *italics*, and the references of record are indicated by underlining.

In separate arguments of patentability of different Groups, Appellants have, where possible, referred to prior arguments to avoid undue repetition.

In the arguments below, Appellants refer to the "Final Office Action" (Office Action mailed November 19, 2002, paper no. 33).

The Logan patent

In general, Logan discloses an audio program and message distribution system in which a host system transmits program segments to clients subscriber locations. Abstract. Content provided by the system may be charged to the subscriber. Col. 6, lines 5 - 9; Col. 10, lines 34 - 36; Col. 15, lines 38 - 41.

To begin, an interested subscriber performs an account initialization procedure where he supplies personal information and initial programming preferences via HTML forms. Col. 6, lines 48 - 56; Col. 8, lines 46 - 54. Also during this account initialization, the subscriber may expressly approve advertising segments or categories of acceptable advertising which, when played, grant the subscriber a rate reduction. Col. 7, lines 60 - 65; Col. 9, lines 5 - 11; Col. 9, lines 57 - 59.

After account initialization via HTML forms, files (including a playback program) which allow the player to begin operation are downloaded to the subscriber. Col. 6, lines 56 - 60; Col. 8, lines 54 - 58. A sequence of programming may then be reproduced for the listener using the playback program. Col. 7, lines 22 - 25; Col. 10, lines 9 - 13. If advertising is elected, advertising segments are inserted between plays of desired program segments. Col. 10, lines 63 - 66; Col. 11, line 36 - 44.

A session usage log is recorded during the playback session to identify every segment (including advertising) actually played, and their start and end times. Col. 7, lines 41 - 45; Col. 11, lines 26 - 28. The contents of the usage log recorded are then uploaded to the server and subsequently processed. Col. 8, lines 10 - 13; Col. 10, lines 31 - 37; Col. 15, lines 30 - 32.

Other Subject Matter Without Support in the Record is not Substantial Evidence

Appellants have already disputed various assertions regarding what is 'well known' but unsupported by the record. Appellants' First Response, page 6. Appellants' Second Response, pages 2 - 8.

Appellants note that the scope of the matter of which the Examiner takes Official Notice is limited to the substantial evidence in the record for such matter. The references of record

clearly do not support the Examiner's broad assertions as to what was well known. At best, the prior art of record shows that only a very limited form of the asserted matter was known.

Accordingly, the Examiner's sweeping assertions which are not supported by the references of record lack substantial evidence, and therefore cannot be used as prior art to the present application. Only the content of the references of record which are prior art to the present application may so used. "[D]eficiencies of the cited references cannot be remedied by the Board's general conclusions about what is 'basic knowledge' or 'common sense.'" In re Zurko, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); In re Lee, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

1. Group I

Group I includes independent claims **1, 36, 51 - 56**, and dependent claims **2 - 21, 28 - 35, 75 and 76**.

As discussed below, the rejection of the claims of Group I is flawed because the Examiner has not made a prima facie case of unpatentability of any claim of Group I. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group I can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group I obvious.

In general, independent claim **51** is an apparatus comprising various means for performing the method of claim **1**. Independent claim **52** is an apparatus which is operative to perform the method of claim **1**. Independent claim **53** is a medium encoded with processing instructions for implementing the method of claim **1**.

Independent claim **36** is a method claim which recites almost all of the limitations of claim **1**. In general, independent claim **54** is an apparatus comprising various means for performing the method of claim **36**. Independent claim **55** is an apparatus which is operative to perform the method of claim **36**. Independent claim **56** is a medium encoded with processing instructions for implementing the method of claim **36**.

All dependent claims depend from either independent claim **1** or independent claim **36**.

Thus, although the discussion and arguments below refer to claim **1**, they are likewise applicable to the remaining claims of the Group.

Group I

1.1. Independent Claim 1

Independent claim 1 is directed to a method in which, during a transaction, information relating to customer activity of a customer with a first vendor is received.

An indication of at least one item the customer desires to purchase from the first vendor is received. The at least one item has an associated total price.

In response to the received information, an indication of an offer for a subsidy from a second vendor is provided. The offer for the subsidy is an offer for a reduction in price relative to the total price of the at least one item.

Also during the transaction, the customer is charged a second price for the at least one item if the offer is accepted. This second price charged is less than the total price.

1.1.1. Certain Limitations of Independent Claim 1

Because many limitations of claim 1 are ignored in the Examiner's rejections of claim 1 over Logan, certain limitations of claim 1 are clarified below.

Claim 1 recites *providing an indication of an offer for a subsidy from a second vendor*. Significantly, this offer is provided *in response to received information relating to customer activity of a customer with a first vendor*.

Thus, the offer of claim 1 must be provided *after receiving the customer activity information*. Therefore, the offer must be provided after the customer has some sort of *customer activity* with the *first vendor*. As described in the present application, various types of customer activities may be used to indicate, among other things, whether the customer is likely to accept an offer for a subsidy. For example, when a customer begins to interact with a first vendor (e.g. via the first vendor's Web site), various types of customer activity may be used to indicate whether the customer is willing to transact with the first vendor. Similarly, various types of customer activity may be used to indicate whether the customer is willing to transact with a subsidizing vendor.

Moreover, *the offer of claim 1 must be an offer for a reduction in price relative to the total price of at least one item the customer desires to purchase from the first vendor*.

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Thus, in summary, the offer of claim 1 **must be**
(a) *provided* at a particular time (i.e. *in response to information relating to customer activity with a first vendor*)
and must be
(b) an offer for a certain thing (i.e. *a reduction in price relative to the total price of at least one item the customer desires to purchase from the first vendor*)

Further, claim 1 further requires that, *during the same transaction, the customer activity information is received*, and also the *customer is charged* (the lower price) *for the item*. Thus, the *offer must also be provided* during that transaction (since the offer is provided *after* the customer information is received but *before* the customer is charged).

All of this assures that the offer is provided when the customer is very susceptible to impulse purchases and other "spur of the moment" decisions. Accordingly, the offer is provided at a time when the customer is **more likely to accept it**.

1.1.2. Advantages of Independent Claim 1

The embodiment of claim 1 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages render the claimed subject matter nonobvious over the cited art.

Because the offer is provided after there is *received information relating to customer activity of a customer with a first vendor*, the offer is provided only after the customer has some sort of *customer activity* with the *first vendor*. Thus, the customer receives the offer during a transaction, *after* he has begun customer activity with the first vendor. This is a time when the customer is very susceptible to impulse purchases and other "spur of the moment" decisions. Accordingly, the offer is provided at a time when the customer is **more likely to accept it**.

In addition, since the offer is for a *reduction in price relative to the total price*, the customer is **even more likely to accept** the offer since the offer is provided *during a transaction* when the customer would otherwise have to pay more for his desired item, and is in fact about to.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

1.2. Examiner's Interpretation of Logan

The rejections rely on two alternative interpretations of Logan offered by the Examiner. Both interpretations generally revolve around which components of Logan are the *offer* recited by claim 1. Both interpretations (like any interpretation of Logan) cannot anticipate or suggest claim 1 unless various limitations of claim 1 are ignored. In fact, Logan completely fails to suggest several limitations that are recited in the independent claims.

Interpretation A

In interpretation A, the Examiner considers the *offer* of claim 1 to be Logan's HTML forms presented during account initialization since these forms allow the subscriber to approve advertising segments or categories of acceptable advertising. This advertising, when played, grants the subscriber a rate reduction. Final Office Action, page 2.

However, this HTML form is not provided after there is *received information relating to customer activity*, as required by claim 1.

Even if this HTML form were provided after there is *received information* as required by claim 1, it is not provided *during the same transaction* in which *the customer is charged* a lower price for the desired item. Thus, the "offer" in Logan is **not** provided at a time when the customer is more likely to accept it - the "offer" is remote from the time at which the customer is more susceptible.

The Examiner incorrectly asserts that in Logan the user is charged during "the same transaction" as account initialization. Final Office Action, page 2. This is clearly contrary to Logan. Logan unambiguously demonstrates that account initialization and charging for programming occur in separate transactions, as explained immediately below.

"Account initialization" and program "playback" require different programs (a HTML browser and a playback program, respectively). Col. 6, lines 48 - 56; Col. 8, lines 46 - 54; Col. 7, lines 22 - 25; Col. 10, lines 9 - 13. Furthermore, the player program is downloaded (and
Group I

therefore made available to play programs) only **after** the account initialization process. Col. 6, lines 56 - 60; Col. 8, lines 54 - 58. Thus, "account initialization" is a separate transaction from "playback".

Interpretation B

In interpretation B, the Examiner considers the *offer* of claim 1 to be Logan's advertising which, when played, grants the subscriber a rate reduction. Final Office Action, page 2.

The advertising of Logan clearly is not *an offer for a subsidy from a second vendor*. In fact, there is no description at all of what the contents of the advertising might be.

More significantly, the advertising of Logan cannot be *accepted*, which is required by claim 1. In fact, in Logan there is nothing the customer can do related to this advertising other than having it play.

The Examiner incorrectly asserts that in Logan the advertising can be accepted by playing the advertising segments. Final Office Action, page 2. This is nonsensical since it implies that playing the advertising is simultaneously both *providing the offer* as well as *accepting the offer*. Under this strained interpretation, all offers are accepted (since they are simultaneously *provided* and *accepted*).

1.3. No Prima Facie Showing of Unpatentability of the Claims of Group I

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a prima facie case of anticipation of any claim of the Group.

Applicable Law

The Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. In re Fritch, 972 F.2d 1260, 1265 (Fed. Cir. 1992). To reject claims in an application under section 103, an examiner must show an un rebutted *prima facie* case of obviousness. In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998). If examination at the initial

Group I

stage does not produce a prima facie case of unpatentability, then without more the applicant is entitled to grant of the patent. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Finally, during examination, claims are given their broadest reasonable interpretation consistent with the specification. *In re Hyatt*, 211 F.3d 1367 (Fed. Cir. 2000). The "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification." *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997).

1.3.1. No showing that the references disclose or suggest *providing, after the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price*

The Examiner interprets Logan as disclosing this limitation. As discussed in Section 1.2 above, no proper interpretation of Logan discloses or suggests this limitation. In general, anything in Logan which the Examiner might consider to be an "offer" either (a) is not provided *after the received information*, (b) is not *an indication of an offer for a reduction in price relative to the total price*, (c) is not provided *during the same transaction* in which *the customer is charged* a lower price for the desired item, or (d) cannot be *accepted*.

The Examiner does not assert that any other reference discloses or suggests this limitation, and in fact no other reference does.

Thus, the Examiner has not shown that the references, alone or in combination, disclose or suggest *providing, after the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price*. The rejection fails for at least this reason.

1.3.2. No showing that the references suggest *charging, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price*

Group I

The Examiner interprets Logan as disclosing this limitation. As discussed in Section 1.2 above, no proper interpretation of Logan discloses or suggests this limitation. In general, anything in Logan which the Examiner might consider to be *charging* does not occur *during the same transaction* in which *customer activity information is received*.

The Examiner does not assert that any other reference discloses or suggests this limitation, and in fact no other reference does.

Thus, in summary, the Examiner has not shown that the references, alone or in combination, suggest *charging, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price*. The rejection fails for at least this reason.

In conclusion, the Examiner has not set forth a *prima facie* case of anticipation of the claims of Group I, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group I, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 1.1.2 "Advantages of Independent Claim 1". Accordingly, for at least those reasons, the claims of Group I are patentable in view of the cited references.

SEPARATE ARGUMENT OF PATENTABILITY

2. Group II

Group II includes independent claims **41, 42 and 60 - 65** and dependent claims **77 and 78**.

As discussed below, the rejection of the claims of Group II is flawed because the Examiner has not made a prima facie case of unpatentability of any claim of Group II. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references.

Further, no claim of Group II can be deemed obvious in light of any references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group II obvious.

In general, independent claim **60** is an apparatus comprising various means for performing the method of claim **41**. Independent claim **61** is an apparatus which is operative to perform the method of claim **41**. Independent claim **62** is a medium encoded with processing instructions for implementing the method of claim **41**.

In general, independent claim **63** is an apparatus comprising various means for performing the method of claim **42**. Independent claim **64** is an apparatus which is operative to perform the method of claim **42**. Independent claim **65** is a medium encoded with processing instructions for implementing the method of claim **42**. Thus, although the discussion and arguments below refer to claim **42**, they are likewise applicable to the remaining claims of the Group.

All dependent claims dependent from independent claim **41**.

Thus, although the discussion and arguments below refer to claim **41**, they are likewise applicable to the remaining claims of the Group.

Group II

2.1. Independent Claim 41

Independent claim 41 is directed to a method in which, during a transaction, information relating to customer activity on a Web site of a first vendor is received. It is determined whether to provide an offer for a subsidy based on the information relating to customer activity.

An offer for a subsidy from a second vendor is determined. An indication of the offer for the subsidy from the second vendor is displayed via a Web page on the Web site.

Customer input is received via the Web site. The customer input representing a response to the offer.

A selection of at least one item the customer desires to purchase is received. The at least one item has an associated total price.

During the transaction, a credit card identifier that identifies a credit card account is received. A second price is charged to the credit card account if the response indicates that the offer is accepted. The second price is less than the total price.

2.1.1. Certain Limitations of Independent Claim 41

Because many limitations of claim 41 are ignored in the Examiner's rejections of claim 41 over Logan, certain limitations of claim 41 are clarified below.

The discussion above in Section 1.1.1 is generally pertinent to the rejection of claim 41. For much the same reasons as claim 1 discussed above, the offer of claim 41 **must be**

(a) *displayed* at a particular time (i.e. *after*, among other things, *receiving information relating to customer activity on a Web site of a first vendor*)

and must be

(b) an offer for a certain thing (i.e. *a subsidy*)

Further, claim 41 further requires that, *during the same transaction, the customer activity information is received*, and also a *credit card identifier* (e.g., a credit card number) *is received*. Thus, the *offer must also be displayed* during that transaction (since the offer is displayed *after* the customer information is received but *before* the credit card identifier is received).

Group II

2.1.2. Advantages of Independent Claim 41

The embodiment of claim 41 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages render the claimed subject matter nonobvious over the cited art.

Because the offer is displayed after there is *received information relating to customer activity on a Web site of a first vendor*, the offer is displayed only after the customer has some sort of *customer activity with the Web site of the first vendor*. Thus, the customer receives the offer during a transaction, *after* he has begun customer activity with *the Web site of the first vendor*. This is a time when the customer is very susceptible to impulse purchases and other "spur of the moment" decisions. Accordingly, the offer is provided at a time when the customer is **more likely to accept it**.

In addition, since the offer is for a *subsidy*, the customer is **even more likely to accept** the offer since the offer is provided *during a transaction* when the customer would otherwise have to pay more for his desired item, and is in fact about to.

In addition, since the offer is displayed during the transaction in which a credit card identifier is received, the customer is **even more likely to accept** the offer since the customer is in a transaction in which he is entering a credit card identifier (i.e. about to submit payment). Accordingly, the customer is more susceptible to an offer which may ameliorate the pain of the foregone money.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

2.2. Examiner's Interpretation of Logan

The discussion above in Section 1.2 is generally pertinent to the rejection of claim 41.

The rejections rely on two alternative interpretations of Logan offered by the Examiner. As discussed in Section 1.2 above, both interpretations generally revolve around which components of Logan are the *offer* recited by claim 41. Both interpretations (like any interpretation of Logan) cannot anticipate or suggest claim 41 unless various limitations of claim Group II

41 are ignored. In fact, Logan completely fails to suggest several limitations that are recited in the independent claims.

Interpretation A

In interpretation A, the Examiner considers the *offer* of claim 41 to be Logan's HTML forms presented during account initialization since these forms allow the subscriber to approve advertising segments or categories of acceptable advertising. This advertising, when played, grants the subscriber a rate reduction. Final Office Action, page 2.

As discussed in Section 1.2 above, this HTML form is not *provided* after *received information relating to customer activity*, as required by claim 41.

Even if this HTML form were provided after there is *received information* as required by claim 1, it is not provided *during the same transaction* in which a *credit card identifier is received*. Thus, the "offer" in Logan is **not** provided at a time when the customer is more likely to accept it - the "offer" is remote from the time at which the customer is more susceptible.

Further, under this interpretation, the system Logan does not *determine whether to provide an offer*, much less *determine whether to provide an offer based on anything in particular*, much less *determine whether to provide an offer based on the information related to customer activity*. In Logan, the HTML form is apparently displayed to everyone.

Interpretation B

In interpretation B, the Examiner considers the *offer* of claim 36 to be Logan's advertising which, when played, grants the subscriber a rate reduction. Final Office Action, page 2.

As discussed in Section 1.2 above, this the advertising of Logan clearly is not *an offer for a subsidy from a second vendor*. In fact, there is no description at all of what the contents of the advertising might be. More significantly, the advertising of Logan cannot be *accepted*, which is required by claim 36.

2.3. No Prima Facie Showing of Unpatentability of the Claims of Group II

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not *Group II*

disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a prima facie case of obviousness of any claim of the Group.

Applicable Law

The factual predicates underlying an obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998). The secondary considerations are also essential components of the obviousness determination. *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992).

When a rejection is based on a combination of references, the Examiner can satisfy the prima facie burden only by showing some objective teaching leading to the purported combination of references. *In re Fritch*, 972 F.2d 1260, 1265 (Fed. Cir. 1992). Lacking a motivation to combine references, there is no prima facie case of obviousness. *In re Rouffet*, 149 F.3d 1350, 1358 (Fed. Cir. 1998).

2.3.1. No showing that the references suggest *determining whether to provide an offer for a subsidy based on the information relating to customer activity*

The Examiner interprets *Logan* as disclosing this limitation. As discussed in Section 2.2 above, no proper interpretation of *Logan* discloses or suggests this limitation. In general, under interpretation A there is no determination whether to provide an "offer". Under interpretation B, the advertising of *Logan* cannot be an "offer".

The Examiner does not assert that any other reference discloses or suggests this limitation, and in fact no other reference does.

Group II

Thus, the Examiner has not shown that the references, alone or in combination, disclose or suggest *determining whether to provide an offer for a subsidy based on the information relating to customer activity*. The rejection fails for at least this reason.

2.3.2. No showing that the references suggest *displaying an indication of the offer for the subsidy from the second vendor*

The Examiner interprets Logan as disclosing this limitation. As discussed in Section 2.2 above, no proper interpretation of Logan discloses or suggests this limitation. In general, anything in Logan which the Examiner might consider to be an "offer" either (a) is not displayed after *the received information*, (b) is not for *a subsidy from a second vendor*, (c) is not provided during the same transaction in which *a credit card identifier is received*, or (d) cannot be accepted.

The Examiner does not assert that any other reference discloses or suggests this limitation, and in fact no other reference does.

Thus, the Examiner has not shown that the references, alone or in combination, disclose or suggest *displaying an indication of the offer for the subsidy from the second vendor*. The rejection fails for at least this reason.

2.3.3. No showing of a proper motivation to modify the references

The rejection of claim 41 requires a modification of Logan. The Examiner simply has not shown a motivation in the prior art of record to modify Logan in the manner proposed, or in any other manner that renders the claims obvious.

Applicable Law

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 21 USPQ2d 1941 (Fed. Cir. 1992). Furthermore, **particular findings must be made as Group II**

to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. In re Kotzab, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000) (emphasis added).

A finding of obviousness requires that the art contain something to suggest the desirability of the proposed combination. In re Grabiak, 769 F.2d 729, 732 (Fed. Cir. 1985). **In the absence of such a showing**, there is inadequate support for the position that the proposed modification would *prima facie* have been obvious. *Id.* The absence of such a suggestion to combine is dispositive in an obviousness determination. Gambro Lundia AB v. Baxter Healthcare Corp., 110 F.3d 1573, 1579 (Fed. Cir. 1997) (emphasis added).

When the art in question is relatively simple, the opportunity to judge by hindsight is particularly tempting. Consequently, the tests of whether to combine references need to be applied rigorously. McGinley v. Franklin Sports, Inc., 262 F.3d 1339, 1352 (Fed. Cir. 2001). In each case the factual inquiry whether to combine references must be thorough and searching. *Id.*, at 1352 - 53.

No Substantial Evidence of a Motivation to Modify

In the rejection of claim 41 (and all other claims of the Group) for obviousness, the Examiner has not offered any reasons to modify Logan. Accordingly, a *prima facie* case of obviousness has not been made for this reason alone.

2.3.4. Level of Skill

Applicable Law

A factual predicate underlying an obviousness determination is the level of ordinary skill in the art. In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998). The skill level is one component of the inquiry for a suggestion to combine. In re Rouffet, 149 F.3d 1350, 1359 (Fed. Cir. 1998).

Lacking a motivation to combine, there is no *prima facie* case of obviousness. In re Rouffet, 149 F.3d 1350, 1358 (Fed. Cir. 1998). If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent. In re Oetiker, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

Group II

Factual Findings

Though required to do so, the Examiner has not set forth any evidence relating to the level of ordinary skill in the art, and has not even alleged what the level of skill in the art would be. The rejection fails for at least this reason.

Based on the present record, one could only conclude that the level of skill is low. No reference cited by the Examiner even addresses any problems that are addressed by the present invention.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group II, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group II, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 2.1.2 "Advantages of Independent Claim 41". Accordingly, for at least those reasons, the claims of Group II are patentable in view of the cited references.

SEPARATE ARGUMENT OF PATENTABILITY

3. Group III

Group III includes independent claim 81.

As discussed below, the rejection of the claims of Group III is flawed because the Examiner has not made a prima facie case of unpatentability of any claim of Group III. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group III can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group III obvious.

3.1. Independent Claim 81

Independent claim 81 is directed to a method in which an indication that an item has been placed in a shopping cart of a Web site of first vendor is received. The item has an associated price.

It is determined whether to provide an offer for a subsidy based on the received indication. An offer for a subsidy from a second vendor is determined. The offer includes a requirement to participate in a transaction with the second vendor.

An indication of the offer for the subsidy from the second vendor is displayed during a transaction. The offer is displayed via a Web page.

Input representing a click of a button on the Web page is received. From the input, a response to the offer for the subsidy is determined.

During the transaction, the item is sold for a second price if the response indicates that the offer is accepted. The second price is less than the price of the item.

Group III

3.2. Advantages of Independent Claim 81

The embodiment of claim 81 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages render the claimed subject matter nonobvious over the cited art.

Because the offer is displayed after an *item is placed in a shopping cart of a Web site*, the offer is displayed only after the customer is ready to purchase the item. This is a time when the customer is very susceptible to impulse purchases and other "spur of the moment" decisions. Accordingly, the offer is provided at a time when the customer is **more likely to accept it**.

In addition, since the offer is for a *subsidy*, the customer is **even more likely to accept** the offer since the offer is provided *during a transaction* when the customer would otherwise have to pay more for his desired item, and is in fact about to.

In addition, since the offer is displayed during the transaction in which the item is sold, the customer is **even more likely to accept** the offer since the customer is in a transaction in which he is about to submit payment. Accordingly, the customer is more susceptible to an offer which may ameliorate the pain of the foregone money.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

3.3. No Prima Facie Showing of Unpatentability of the Claims of Group III

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a prima facie case of obviousness of any claim of the Group.

3.3.1. No showing that the references suggest *determining whether to provide an offer for a subsidy based on received information*

The Examiner interprets Logan as disclosing this limitation. As discussed in Section 2.2 above, no proper interpretation of Logan discloses or suggests this limitation. In general, under interpretation A there is no determination whether to provide an "offer". Under interpretation B, the advertising of Logan cannot be an "offer".

The Examiner does not assert that any other reference discloses or suggests this limitation, and in fact no other reference does.

Thus, the Examiner has not shown that the references, alone or in combination, disclose or suggest that limitation. The rejection fails for at least this reason.

3.3.2. No showing that the references suggest *displaying an indication of the offer for the subsidy from the second vendor*

The Examiner interprets Logan as disclosing this limitation. As discussed in Section 2.2 above, no proper interpretation of Logan discloses or suggests this limitation. In general, anything in Logan which the Examiner might consider to be an "offer" either (a) is not displayed after *the received information*, (b) is not for *a subsidy from a second vendor*, (c) is not provided during the same transaction in which *the item is sold*, or (d) cannot be *accepted*.

The Examiner does not assert that any other reference discloses or suggests this limitation, and in fact no other reference does.

Thus, the Examiner has not shown that the references, alone or in combination, disclose or suggest that limitation. The rejection fails for at least this reason.

3.3.3. No showing of a proper motivation to modify the references

The rejection of claim **81** requires a modification of Logan. The Examiner simply has not shown a motivation in the prior art of record to modify Logan in the manner proposed, or in any other manner that renders the claims obvious.

No Substantial Evidence of a Motivation to Modify

In the rejection of claim **81** for obviousness, the Examiner has offered the following motivation to modify Logan in the manner proposed:

"one skilled in the arts would have known to add Logan's teaching of item selection, offers for discounted prices, the feature of placing items in a shopping cart of a Web site of the first vendor to enhance the enjoyment / experience of the user."

This conclusory statement is not a motivation to modify Logan. According to the Examiner's interpretation of Logan, offers are "triggered" based on the user's request to show advertising. This request has nothing to do with shopping or placing items in a shopping cart of a Web site. Further, no reference suggests the tersely stated motivation of "enhancing the enjoyment / experience of the user" at all, much less that such a benefit would result from the proposed modification of Logan.

Significantly, when an offer is "triggered" by placing an item in a shopping cart of a web site, the offer is displayed at a time when the customer is very susceptible to impulse purchases and other "spur of the moment" decisions. Accordingly, the offer is provided at a time when the customer is **more likely to accept it**. Nothing in Logan suggests this.

Accordingly, a *prima facie* case of obviousness has not been made for this reason alone.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group III, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group III, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 3.2 "Advantages of Independent Claim 40". Accordingly, for at least those reasons, the claims of Group III are patentable in view of the cited references.

Group III

SEPARATE ARGUMENT OF PATENTABILITY

4. Group IV

Group IV includes independent claim **49, 72, 73 and 74** and dependent claims **50 and 80**.

As discussed below, the rejection of the claims of Group IV is flawed because the Examiner has not made a prima facie case of unpatentability of any claim of Group IV. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group IV can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group IV obvious.

In general, independent claim **72** is an apparatus comprising various means for performing the method of claim **49**. Independent claim **73** is an apparatus which is operative to perform the method of claim **49**. Independent claim **74** is a medium encoded with processing instructions for implementing the method of claim **49**. Claims **50 and 80** depend from claim **49**.

Thus, although the discussion and arguments below refer to claim **49**, they are likewise applicable to the remaining claims of the Group.

4.1. Independent Claim 49

Independent claim **49** is directed to a method in which, during a transaction, information relating to customer activity of a customer with a first vendor is received.

An indication of at least one item the customer desires to purchase is received. The at least one item has an associated total price.

In response to the received information, an indication of an offer for a subsidy from a second vendor is provided. The offer for the subsidy is an offer for a reduction in price relative to the total price of the at least one item.

Group IV

A response to the offer is received. Also during the transaction, the at least one item is provided to the customer for free if the response indicates acceptance of the offer.

4.2. Advantages of Independent Claim 49

The embodiment of claim 43 provides several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages render the claimed subject matter nonobvious over the cited art.

Because the offer is provided after there is *received information relating to customer activity of a customer with a first vendor*, the offer is provided only after the customer has some sort of *customer activity* with the *first vendor*. Thus, the customer receives the offer during a transaction, *after* he has begun customer activity with the first vendor. This is a time when the customer is very susceptible to impulse purchases and other "spur of the moment" decisions. Accordingly, the offer is provided at a time when the customer is **more likely to accept it**.

In addition, since the offer is for a *reduction in price relative to the total price*, the customer is **even more likely to accept** the offer since the offer is provided *during a transaction* when the customer would otherwise have to pay more for his desired item, and is in fact about to.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

4.3. No Prima Facie Showing of Unpatentability of the Claims of Group IV

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a prima facie case of obviousness of any claim of the Group.

4.3.1. No showing that the references disclose or suggest *providing, after the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price*

The Examiner interprets Logan as disclosing this limitation. As discussed in Section 1.2 above, no proper interpretation of Logan discloses or suggests this limitation. In general, anything in Logan which the Examiner might consider to be an "offer" either (a) is not provided *after the received information*, (b) is not *an indication of an offer for a reduction in price relative to the total price*, (c) is not provided *during the same transaction* in which *the customer is charged a lower price for the desired item*, or (d) cannot be *accepted*.

The Examiner does not assert that any other reference discloses or suggests this limitation, and in fact no other reference does.

Thus, the Examiner has not shown that the references, alone or in combination, disclose or suggest *providing, after the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price*. The rejection fails for at least this reason.

4.3.2. No showing that the references suggest *providing, during the transaction, the at least one item to the customer for free if the response indicates acceptance of the offer*

The Examiner interprets Logan as suggesting this limitation. As discussed in Section 1.2 above, no proper interpretation of Logan discloses or suggests this limitation. In general, anything in Logan which the Examiner might consider to be *providing the item to the customer* does not occur *during the same transaction* in which *customer activity information is received*.

The Examiner does not assert that any other reference discloses or suggests this limitation, and in fact no other reference does.

Thus, in summary, the Examiner has not shown that the references, alone or in combination, suggest this limitation. The rejection fails for at least this reason.

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group IV, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group IV, and none of the references (alone or in combination) *Group IV*

possess the advantages conferred by those limitations, as discussed in detail above in Section 4.2 "Advantages of Independent Claim 49". Accordingly, for at least those reasons, the claims of Group IV are patentable in view of the cited references.

SEPARATE ARGUMENT OF PATENTABILITY

5. Group V

Group V includes dependent claims **22 - 27**.

Claims **22 - 27** depend from claim **1** accordingly, all the claims of this Group are patentable at least for the reasons discussed above with respect to Group I. In addition, further arguments of patentability are provided in this Section.

As discussed below, the rejection of the claims of Group V is flawed because the Examiner has not made a prima facie case of unpatentability of any claim of Group V. The Examiner has not shown all limitations of any claim to be disclosed or suggested by the references. The rejection is also based on improper combinations and modifications of the references without adequate motivation in the prior art for making the proposed combinations and modifications.

Further, no claim of Group V can be deemed obvious in light of the references of record, alone or in any combination, because the cited references, alone or in any combination, cannot be interpreted in a manner that would disclose or suggest the limitations of any pending claim. Further, the prior art of record does not contain any proper motivation to combine or modify the references in any way which renders any claim of Group V obvious.

5.1. Dependent Claims **22 - 27**

Each claim of this Group generally involves a new service that is provided to the customer.

Claims **22 and 23** involve *receiving an indication that the customer has switched service providers*.

Claims **24 and 25** involve *switching providers of a service that is provided to the customer*.

Claims **26 and 27** involve *initiating a new service agreement so that a particular service is provided to the customer by the second vendor*.

Group V

5.2. Advantages of the Claims

In addition to the advantages of claim 1 (Group I) from which the claims of the Group depend, the embodiment of the claims of the Group provide several advantages not even recognized, much less disclosed or suggested, by the prior art of record, either alone or in combination. These advantages render the claimed subject matter nonobvious over the cited art.

As discussed in the present application, by requiring the customer to *switch service providers* or *initiate a service provided by the second vendor*, the customer may be obligated to do something which has little impact on him (e.g., switch from one phone service to another phone service) but which has a significant benefit to another (e.g., the vendor offering the new service). Thus, the second vendor is motivated to significantly compensate the customer for this privilege (e.g., with a large subsidy to the customer).

For example, the acquisition budgets of various service providers may be advantageously used to facilitate commerce. A customer that purchases items from a first vendor may be paid, directly or indirectly, by a second vendor, so that the customer pays a reduced price, perhaps nothing at all, for his desired items. In exchange, the customer may be required to sign up for a service that is provided by the second vendor. Since many service providers are willing to pay significant amounts of money (e.g. often \$50 to \$200) to acquire a new customer, the ability to acquire a customer by essentially "intervening" in a sale between others can benefit all parties involved. In short, the second vendor can provide a subsidy to the customer. The customer is benefited by the reduced price of his items, the first vendor is benefited by the increased sales and customer satisfaction that such an arrangement would bring, and the second vendor is benefited by the additional transaction, particularly the acquisition of a new customer in one embodiment.

Moreover, the acquisition budgets of service providers may be more advantageously used, in that the offers are provided when the customer is more willing to accept them, as described above in Section 1.1.2.

A great many more advantageous and diverse uses of the claimed invention, both explicit and implicit in the present Application, are possible and would be apparent to those of skill in the art based on the Appellants' disclosure.

5.3. No Prima Facie Showing of Unpatentability of the Claims of Group V

A reading of the rejections of the claims of the Group reveals that the Examiner has consistently ignored or misinterpreted the limitations of the claims. Several limitations are not disclosed or suggested by the references of record. Accordingly, the Examiner has not presented a prima facie case of obviousness of any claim of the Group.

5.3.1. The Ellis publication

The Examiner asserts that Ellis "discloses a system where advertisers offer incentives to users to switch their services.

Ellis only discloses that credit card issuers provide application forms (apparently indiscriminately) in the mail and advertise low interest rates in the hopes that new customers will apply.

5.3.2. No showing of a proper motivation to combine the references

No Substantial Evidence of a Motivation to Modify

No Substantial Evidence of a Motivation to Combine

The examiner proposes the following motivation to combine Ellis and Logan: "for the advantage of acquiring new customers from the pool of competitors' current customers".

However, Logan has nothing to do with acquiring new customers, or with allowing the customer to accept offers from any vendors. In fact, nothing in Logan can assure that users are even watching the advertising that may be provided - users may simply turn their heads, leave the computer, etc. Thus, there is nothing in Logan that would motivate one to look to any sort of application forms such as provided by Ellis.

Similarly, Ellis is nothing more than dissemination of "junk mail". The application forms of Ellis are not provided during any time when a customer is favorably disposed to read or accept such forms. In fact, there is no reason why anyone would read the application forms of Ellis rather than, e.g., throwing them away. For this reason, such random junk mail promotions suffer from extremely low acceptance rates.

Group V

5.3.3. Nonanalogous References

Applicable Law

In order to rely on a reference as a basis for rejection of the applicant's invention, the reference must either be in the field of the applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992).

Factual Findings

The Examiner has not provided any evidence relating to the problem, nor why the references are pertinent to the problem.

The Examiner has not provided any evidence relating to the field of endeavor, nor why the references are in the field of endeavor.

Not Showing That References Are Reasonably Pertinent to Problem

Not Showing That References Are Field of Endeavor

Logan is directed to an audio program and message distribution system. Abstract.

Ellis is directed to junk mail promotions for credit cards.

Ellis has nothing to do with, e.g., facilitating commerce or using acquisition budgets of service providers to enhance other transactions.

The Examiner does not at all describe how the two references can be considered in the field of endeavor or reasonably pertinent to the problems addressed. The Examiner has not indicated any facts which permit such conclusions to be made. The rejection fails for at least this reason.

5.3.4. Level of Skill

As discussed above in Section 2.3.4, the Examiner has not set forth any evidence relating to the level of ordinary skill in the art, and has not even alleged what the level of skill in the art would be. The rejection fails for at least this reason.

Group V

In conclusion, the Examiner has not set forth a *prima facie* case of obviousness of the claims of Group V, none of the references (alone or in combination) disclose or suggest the limitations of the claims of Group V, and none of the references (alone or in combination) possess the advantages conferred by those limitations, as discussed in detail above in Section 5.2 "Advantages of the Claims". Accordingly, for at least those reasons, the claims of Group V are patentable in view of the cited references.

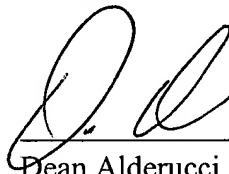
CONCLUSION

Thus, the Examiner's rejection of the pending claims are is improper at least because the references, alone or in combination, do not disclose or suggest all the limitations of any claim. In addition, in the obviousness rejections the Examiner has improperly combined the references because there is no adequate reasoning or support in the prior art for making the proposed combinations. Therefore, Appellants respectfully request that the Examiner's rejections be reversed.

If any issues remain, or if there are any further suggestions for expediting allowance of the present application, please contact Dean Alderucci using the information provided below.

Appellants hereby request any extension of time that may be required to make this Appeal Brief timely. Please charge any fees that may be required for this paper, or credit any overpayment, to Deposit Account No. 50-0271.

Respectfully submitted,



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December 22, 2003
Date

APPENDIX A

CLEAN COPY OF CLAIMS INVOLVED IN THE APPEAL

Claims 1 - 42, 49 - 65, 72 - 79, 80 and 81 are pending

Claims 1, 36, 41-42, 49, 51- 56, 60 - 65, 72 - 74 and 81 are independent.

1. A method, comprising:
 - receiving, during a transaction, information relating to customer activity of a customer with a first vendor;
 - receiving an indication of at least one item the customer desires to purchase from the first vendor, the at least one item having an associated total price;
 - providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price; and
 - charging, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price.
2. The method of claim 1, in which the step of receiving information relating to customer activity comprises:
 - reading information from a cookie.
3. The method of claim 1, in which the step of receiving information relating to customer activity comprises:
 - receiving information via at least one of a Web server, a telephone and a POS terminal.
4. The method of claim 1, wherein the indication of an offer for a subsidy is provided via at least one of e-mail, postal mail, and telephone.

5. The method of claim 1, in which the step of charging the customer the second price for the at least one item comprises:
 - charging the customer the total price; and
 - crediting an amount of funds to an account, the amount of funds being based on a difference between the total price and the second price.
6. The method of claim 5, in which the step of crediting is performed after the step of charging the total price.
7. The method of claim 5, in which the step of crediting comprises:
 - crediting the amount of funds to a credit card account.
8. The method of claim 1, in which the step of charging the customer the second price for the at least one item comprises:
 - charging the second price to an account in one transaction.
9. The method of claim 1, further comprising:
 - determining whether to provide an offer for a subsidy based on the information relating to customer activity.
10. The method of claim 9, in which the step of determining whether to provide an offer for a subsidy based on the information relating to customer activity comprises:
 - determining if the information relating to customer activity satisfies at least one rule.
11. The method of claim 1, further comprising:
 - determining if the information relating to customer activity satisfies at least one rule.
12. The method of claim 11, in which the step of providing, in response to the received indication, an indication of an offer for a subsidy is performed if the information relating to customer activity satisfies at least one rule.

13. The method of claim 1, further comprising:
determining an offer for a subsidy from the second vendor based on the information relating to customer activity.
14. The method of claim 13, further comprising:
determining an offer for a subsidy from the second vendor based on a rule and the information relating to customer activity.
15. The method of claim 1, further comprising:
determining an offer for a subsidy from the second vendor if the information indicates a willingness to transact.
16. The method of claim 1, further comprising:
receiving a response to the offer.
17. The method of claim 16, further comprising:
determining whether the response was received within a predetermined period of time.
18. The method of claim 17, in which
the step of charging
is performed only
if the response indicates acceptance of the offer and if the response was received within the predetermined period of time.
19. The method of claim 17, in which
the predetermined period of time
is
a predetermined amount of time after the indication of an offer was provided.

20. The method of claim 16, in which
the step of charging
is performed only
if the response indicates acceptance of the offer.
21. The method of claim 1, in which
the offer for the subsidy defines an obligation for the customer to fulfill in
exchange for the subsidy; and further comprising:
receiving an indication that the customer has fulfilled the obligation.
22. The method of claim 21, in which the step of receiving an indication that the customer
has fulfilled the obligation comprises:
receiving an indication that the customer has switched service providers.
23. The method of claim 22, in which the step of receiving an indication that the customer
has switched service providers comprises:
determining a new customer of the second vendor; and
determining if the new customer had been offered a subsidy.
24. The method of claim 1, further comprising:
switching providers of a service that is provided to the customer.
25. The method of claim 24, in which the service comprises at least one of:
telephone service, Internet service, banking services, credit card account services,
insurance service, securities trading service, utilities service, satellite television service, and cable
television service.
26. The method of claim 1, further comprising:
initiating a new service agreement so that a particular service is provided to the customer
by the second vendor.

27. The method of claim 26, in which the service comprises at least one of:
telephone service, Internet service, banking services, credit card account services,
insurance service, securities trading service, utilities service, satellite television service, and cable
television service.
28. The method of claim 1, further comprising:
facilitating a transaction between the customer and the second vendor.
29. The method of claim 1, further comprising:
soliciting and obtaining agreement by the customer to participate in a transaction with the
second vendor.
30. The method of claim 29, further comprising:
determining whether the customer participated in a transaction with the second vendor.
31. The method of claim 29, further comprising:
assessing a penalty if the customer did not participate in the transaction.
32. The method of claim 1, in which the information relating to customer activity comprises
an indication of at least one of:
a mouse click on a predetermined portion of a Web page;
a mouse click on a predetermined banner advertisement;
a mouse click on an indication of an item;
a mouse-over on a predetermined portion of a Web page; and
mouse-overs on predetermined portions of Web pages at least a predetermined number of
times.

33. The method of claim 1, in which the information relating to customer activity comprises an indication of at least one of:

- a search that is performed for a predetermined product;
- accessing predetermined Web pages;
- accessing a predetermined number of predetermined Web pages;
- accessing predetermined Web pages in a predetermined sequence;
- accessing predetermined Web pages during a predetermined time period;
- a duration that the Web site is open; and
- previous access to a predetermined Web site at least a predetermined number of times.

34. The method of claim 1, in which the information relating to customer activity comprises an indication of at least one of:

- a predetermined number of items that a customer is ready to purchase from the first vendor;
- a predetermined item that the customer is ready to purchase from the first vendor;
- a duration that an item is selected for purchase;
- requesting a coupon for a predetermined item;
- an item having at least a predetermined price that the customer is ready to purchase from the first vendor;
- at least a predetermined number of previous purchases from the first vendor; and
- frequent shopper status of the customer.

35. The method of claim 1, in which the offer defines at least one of:
the second vendor; and
an obligation for the customer to fulfill in exchange for the subsidy.

36. A method, comprising:

receiving, during a transaction, information relating to customer activity with a first vendor;

receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;

determining whether to provide an offer for a subsidy based on the information relating to customer activity;

determining an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;

providing an indication of the offer for the subsidy from the second vendor;

receiving a response to the offer; and

charging, during the transaction, the customer a second price for the at least one item if the response indicates that the offer is accepted, the second price being less than the total price.

41. A method, comprising the steps of:

receiving, during a transaction, information relating to customer activity on a Web site of a first vendor;

determining whether to provide an offer for a subsidy based on the information relating to customer activity;

determining an offer for a subsidy from a second vendor;

displaying, via a Web page on the Web site, an indication of the offer for the subsidy from the second vendor;

receiving customer input via the Web site, the customer input representing a response to the offer;

receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;

receiving, during the transaction, a credit card identifier that identifies a credit card account; and

charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

42. A method, comprising the steps of:

- receiving, during a transaction, information relating to customer activity at a POS terminal of a first vendor;
- determining whether to provide an offer for a subsidy based on the information relating to customer activity;
- determining an offer for a subsidy from a second vendor;
- outputting at the POS terminal an indication of the offer for the subsidy from the second vendor;
- receiving customer input via the POS terminal, the customer input representing a response to the offer;
- receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;
- receiving, during the transaction, a credit card identifier that identifies a credit card account; and
- charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

49. A method, comprising:

- receiving, during a transaction, information relating to customer activity of a customer with a first vendor;
- receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
- providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;
- receiving a response to the offer; and
- providing, during the transaction, the at least one item to the customer for free if the response indicates acceptance of the offer.

50. The method of claim 49, further comprising:
providing a credit to the customer if the response indicates acceptance of the offer.
51. An apparatus, comprising:
means for receiving, during a transaction, information relating to customer activity of a customer with a first vendor;
means for receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
means for providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price; and
means for charging, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price.
52. An apparatus, comprising:
a data storage device; and
a processor connected to the data storage device,
the data storage device storing a program for controlling the processor; and
the processor operative with the program to:
receive, during a transaction, information relating to customer activity of a customer with a first vendor;
receive an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
provide, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price; and
charge, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price.

53. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising:

receiving, during a transaction, information relating to customer activity of a customer with a first vendor;

receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;

providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price; and

charging, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price.

54. An apparatus, comprising:

means for receiving, during a transaction, information relating to customer activity with a first vendor;

means for receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;

means for determining whether to provide an offer for a subsidy based on the information relating to customer activity;

means for determining an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;

means for providing an indication of the offer for the subsidy from the second vendor;

means for receiving a response to the offer; and

means for charging, during the transaction, the customer a second price for the at least one item if the response indicates that the offer is accepted, the second price being less than the total price.

55. An apparatus, comprising:
- a data storage device; and
 - a processor connected to the data storage device,
 - the data storage device storing a program for controlling the processor; and
 - the processor operative with the program to:
 - receive, during a transaction, information relating to customer activity with a first vendor;
 - receive an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - determine whether to provide an offer for a subsidy based on the information relating to customer activity;
 - determine an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;
 - provide an indication of the offer for the subsidy from the second vendor;
 - receive a response to the offer; and
 - charge, during the transaction, the customer a second price for the at least one item if the response indicates that the offer is accepted, the second price being less than the total price.

56. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising:

receiving, during a transaction, information relating to customer activity with a first vendor;

receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;

determining whether to provide an offer for a subsidy based on the information relating to customer activity;

determining an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;

providing an indication of the offer for the subsidy from the second vendor;

receiving a response to the offer; and

charging, during the transaction, the customer a second price for the at least one item if the response indicates that the offer is accepted, the second price being less than the total price.

60. An apparatus, comprising:

means for receiving, during a transaction, information relating to customer activity on a Web site of a first vendor;

means for determining whether to provide an offer for a subsidy based on the information relating to customer activity;

means for determining an offer for a subsidy from a second vendor;

means for displaying, via a Web page on the Web site, an indication of the offer for the subsidy from the second vendor;

means for receiving customer input via the Web site, the customer input representing a response to the offer;

means for receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;

means for receiving, during the transaction, a credit card identifier that identifies a credit card account; and

means for charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

61. An apparatus, comprising:
- a data storage device; and
 - a processor connected to the data storage device,
 - the data storage device storing a program for controlling the processor; and
 - the processor operative with the program to:
 - receive, during a transaction, information relating to customer activity on a Web site of a first vendor;
 - determine whether to provide an offer for a subsidy based on the information relating to customer activity;
 - determine an offer for a subsidy from a second vendor;
 - display, via a Web page on the Web site, an indication of the offer for the subsidy from the second vendor;
 - receive customer input via the Web site, the customer input representing a response to the offer;
 - receive a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - receive, during the transaction, a credit card identifier that identifies a credit card account; and
 - charge a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

62. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising the steps of:

receiving, during a transaction, information relating to customer activity on a Web site of a first vendor;

determining whether to provide an offer for a subsidy based on the information relating to customer activity;

determining an offer for a subsidy from a second vendor;

displaying, via a Web page on the Web site, an indication of the offer for the subsidy from the second vendor;

receiving customer input via the Web site, the customer input representing a response to the offer;

receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;

receiving, during the transaction, a credit card identifier that identifies a credit card account; and

charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

63. An apparatus, comprising:
- means for receiving, during a transaction, information relating to customer activity at a POS terminal of a first vendor;
 - means for determining whether to provide an offer for a subsidy based on the information relating to customer activity;
 - means for determining an offer for a subsidy from a second vendor;
 - means for outputting at the POS terminal an indication of the offer for the subsidy from the second vendor;
 - means for receiving customer input via the POS terminal, the customer input representing a response to the offer;
 - means for receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - means for receiving, during the transaction, a credit card identifier that identifies a credit card account; and
 - means for charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

64. An apparatus, comprising:
- a data storage device; and
 - a processor connected to the data storage device,
 - the data storage device storing a program for controlling the processor; and
 - the processor operative with the program to:
 - receive, during a transaction, information relating to customer activity at a POS terminal of a first vendor;
 - determine whether to provide an offer for a subsidy based on the information relating to customer activity;
 - determine an offer for a subsidy from a second vendor;
 - output at the POS terminal an indication of the offer for the subsidy from the second vendor;
 - receive customer input via the POS terminal, the customer input representing a response to the offer;
 - receive a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - receive, during the transaction, a credit card identifier that identifies a credit card account; and
 - charge a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

65. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising the steps of:

receiving, during a transaction, information relating to customer activity at a POS terminal of a first vendor;

determining whether to provide an offer for a subsidy based on the information relating to customer activity;

determining an offer for a subsidy from a second vendor;

outputting at the POS terminal an indication of the offer for the subsidy from the second vendor;

receiving customer input via the POS terminal, the customer input representing a response to the offer;

receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;

receiving, during the transaction, a credit card identifier that identifies a credit card account; and

charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

66 - 71. (CANCELLED)

72. An apparatus, comprising:

means for receiving, during a transaction, information relating to customer activity of a customer with a first vendor;

means for receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;

means for providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;

means for receiving a response to the offer; and

means for providing, during the transaction, the at least one item to the customer for free if the response indicates acceptance of the offer.

73. An apparatus, comprising:
- a data storage device; and
 - a processor connected to the data storage device,
 - the data storage device storing a program for controlling the processor; and
 - the processor operative with the program to:
 - receive, during a transaction, information relating to customer activity of a customer with a first vendor;
 - receive an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - provide, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;
 - receive a response to the offer; and
 - provide, during the transaction, the at least one item to the customer for free if the response indicates acceptance of the offer.
74. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising the steps of:
- receiving, during a transaction, information relating to customer activity of a customer with a first vendor;
 - receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;
 - receiving a response to the offer; and
 - providing, during the transaction, the at least one item to the customer for free if the response indicates acceptance of the offer.

75. The method of claim 1, wherein the act of charging the customer comprises:
charging the customer a total price; and
crediting the customer an amount so that the customer pays the second price for the at least one item.
76. The method of claim 36, wherein the act of charging the customer comprises:
charging the customer a total price; and
crediting the customer an amount so that the customer pays the second price for the at least one item.
77. The method of claim 41, wherein the act of charging a second price comprises:
charging the total price to the credit card account; and
crediting an amount to the credit card account so that a net result is a charge of the second price for the at least one item to the credit card account.
78. The method of claim 41, wherein the act of charging a second price comprises:
charging the total price to the credit card account; and
crediting an amount to the credit card account so that a net result is a charge of the second price for the at least one item to the credit card account.
79. (CANCELLED)
80. The method of claim 49, wherein the act of providing the at least one item to the customer comprises:
charging the customer the total price; and crediting the customer an amount equal to the total price so that the customer receives the at least one item for free.

81. A method, comprising the steps of:
- receiving an indication that an item has been placed in a shopping cart of a Web site of first vendor,
 - in which the item has an associated price;
 - determining whether to provide an offer for a subsidy based on the received indication;
 - determining an offer for a subsidy from a second vendor,
 - in which the offer includes a requirement to participate in a transaction with the second vendor;
 - displaying, during a transaction, an indication of the offer for the subsidy from the second vendor,
 - in which the offer is displayed via a Web page;
 - receiving input representing a click of a button on the Web page;
 - determining, from the input, a response to the offer for the subsidy; and
 - selling, during the transaction, the item for a second price if the response indicates that the offer is accepted,
 - in which the second price is less than the price of the item.

APPENDIX B

INDEPENDENT CLAIMS INVOLVED IN THE APPEAL

Claims 1, 36, 41-42, 49, 51- 56, 60 - 65, 72 - 74 and 81 are independent.

1. A method, comprising:
 - receiving, during a transaction, information relating to customer activity of a customer with a first vendor;
 - receiving an indication of at least one item the customer desires to purchase from the first vendor, the at least one item having an associated total price;
 - providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price; and
 - charging, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price.
36. A method, comprising:
 - receiving, during a transaction, information relating to customer activity with a first vendor;
 - receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - determining whether to provide an offer for a subsidy based on the information relating to customer activity;
 - determining an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;
 - providing an indication of the offer for the subsidy from the second vendor;
 - receiving a response to the offer; and
 - charging, during the transaction, the customer a second price for the at least one item if the response indicates that the offer is accepted, the second price being less than the total price.
41. A method, comprising the steps of:

receiving, during a transaction, information relating to customer activity on a Web site of a first vendor;

determining whether to provide an offer for a subsidy based on the information relating to customer activity;

determining an offer for a subsidy from a second vendor;

displaying, via a Web page on the Web site, an indication of the offer for the subsidy from the second vendor;

receiving customer input via the Web site, the customer input representing a response to the offer;

receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;

receiving, during the transaction, a credit card identifier that identifies a credit card account; and

charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

42. A method, comprising the steps of:

- receiving, during a transaction, information relating to customer activity at a POS terminal of a first vendor;
- determining whether to provide an offer for a subsidy based on the information relating to customer activity;
- determining an offer for a subsidy from a second vendor;
- outputting at the POS terminal an indication of the offer for the subsidy from the second vendor;
- receiving customer input via the POS terminal, the customer input representing a response to the offer;
- receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;
- receiving, during the transaction, a credit card identifier that identifies a credit card account; and
- charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

49. A method, comprising:

- receiving, during a transaction, information relating to customer activity of a customer with a first vendor;
- receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
- providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;
- receiving a response to the offer; and
- providing, during the transaction, the at least one item to the customer for free if the response indicates acceptance of the offer.

51. An apparatus, comprising:
- means for receiving, during a transaction, information relating to customer activity of a customer with a first vendor;
 - means for receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - means for providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price; and
 - means for charging, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price.
52. An apparatus, comprising:
- a data storage device; and
 - a processor connected to the data storage device,
- the data storage device storing a program for controlling the processor; and
- the processor operative with the program to:
- receive, during a transaction, information relating to customer activity of a customer with a first vendor;
 - receive an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - provide, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price; and
 - charge, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price.

53. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising:

receiving, during a transaction, information relating to customer activity of a customer with a first vendor;

receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;

providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price; and

charging, during the transaction, the customer a second price for the at least one item if the offer is accepted, the second price being less than the total price.

54. An apparatus, comprising:

means for receiving, during a transaction, information relating to customer activity with a first vendor;

means for receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;

means for determining whether to provide an offer for a subsidy based on the information relating to customer activity;

means for determining an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;

means for providing an indication of the offer for the subsidy from the second vendor;

means for receiving a response to the offer; and

means for charging, during the transaction, the customer a second price for the at least one item if the response indicates that the offer is accepted, the second price being less than the total price.

55. An apparatus, comprising:
- a data storage device; and
 - a processor connected to the data storage device,
 - the data storage device storing a program for controlling the processor; and
 - the processor operative with the program to:
 - receive, during a transaction, information relating to customer activity with a first vendor;
 - receive an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - determine whether to provide an offer for a subsidy based on the information relating to customer activity;
 - determine an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;
 - provide an indication of the offer for the subsidy from the second vendor;
 - receive a response to the offer; and
 - charge, during the transaction, the customer a second price for the at least one item if the response indicates that the offer is accepted, the second price being less than the total price.

56. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising:

receiving, during a transaction, information relating to customer activity with a first vendor;

receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;

determining whether to provide an offer for a subsidy based on the information relating to customer activity;

determining an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;

providing an indication of the offer for the subsidy from the second vendor;

receiving a response to the offer; and

charging, during the transaction, the customer a second price for the at least one item if the response indicates that the offer is accepted, the second price being less than the total price.

60. An apparatus, comprising:

means for receiving, during a transaction, information relating to customer activity on a Web site of a first vendor;

means for determining whether to provide an offer for a subsidy based on the information relating to customer activity;

means for determining an offer for a subsidy from a second vendor;

means for displaying, via a Web page on the Web site, an indication of the offer for the subsidy from the second vendor;

means for receiving customer input via the Web site, the customer input representing a response to the offer;

means for receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;

means for receiving, during the transaction, a credit card identifier that identifies a credit card account; and

means for charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

61. An apparatus, comprising:
- a data storage device; and
 - a processor connected to the data storage device,
 - the data storage device storing a program for controlling the processor; and
 - the processor operative with the program to:
 - receive, during a transaction, information relating to customer activity on a Web site of a first vendor;
 - determine whether to provide an offer for a subsidy based on the information relating to customer activity;
 - determine an offer for a subsidy from a second vendor;
 - display, via a Web page on the Web site, an indication of the offer for the subsidy from the second vendor;
 - receive customer input via the Web site, the customer input representing a response to the offer;
 - receive a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - receive, during the transaction, a credit card identifier that identifies a credit card account; and
 - charge a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

62. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising the steps of:

receiving, during a transaction, information relating to customer activity on a Web site of a first vendor;

determining whether to provide an offer for a subsidy based on the information relating to customer activity;

determining an offer for a subsidy from a second vendor;

displaying, via a Web page on the Web site, an indication of the offer for the subsidy from the second vendor;

receiving customer input via the Web site, the customer input representing a response to the offer;

receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;

receiving, during the transaction, a credit card identifier that identifies a credit card account; and

charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

63. An apparatus, comprising:

means for receiving, during a transaction, information relating to customer activity at a POS terminal of a first vendor;

means for determining whether to provide an offer for a subsidy based on the information relating to customer activity;

means for determining an offer for a subsidy from a second vendor;

means for outputting at the POS terminal an indication of the offer for the subsidy from the second vendor;

means for receiving customer input via the POS terminal, the customer input representing a response to the offer;

means for receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;

means for receiving, during the transaction, a credit card identifier that identifies a credit card account; and

means for charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

64. An apparatus, comprising:
- a data storage device; and
 - a processor connected to the data storage device,
 - the data storage device storing a program for controlling the processor; and
 - the processor operative with the program to:
 - receive, during a transaction, information relating to customer activity at a POS terminal of a first vendor;
 - determine whether to provide an offer for a subsidy based on the information relating to customer activity;
 - determine an offer for a subsidy from a second vendor;
 - output at the POS terminal an indication of the offer for the subsidy from the second vendor;
 - receive customer input via the POS terminal, the customer input representing a response to the offer;
 - receive a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - receive, during the transaction, a credit card identifier that identifies a credit card account; and
 - charge a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

65. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising the steps of:

- receiving, during a transaction, information relating to customer activity at a POS terminal of a first vendor;

- determining whether to provide an offer for a subsidy based on the information relating to customer activity;

- determining an offer for a subsidy from a second vendor;

- outputting at the POS terminal an indication of the offer for the subsidy from the second vendor;

- receiving customer input via the POS terminal, the customer input representing a response to the offer;

- receiving a selection of at least one item the customer desires to purchase, the at least one item having an associated total price;

- receiving, during the transaction, a credit card identifier that identifies a credit card account; and

- charging a second price to the credit card account if the response indicates that the offer is accepted, the second price being less than the total price.

72. An apparatus, comprising:

- means for receiving, during a transaction, information relating to customer activity of a customer with a first vendor;

- means for receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;

- means for providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;

- means for receiving a response to the offer; and

- means for providing, during the transaction, the at least one item to the customer for free if the response indicates acceptance of the offer.

73. An apparatus, comprising:
- a data storage device; and
 - a processor connected to the data storage device,
 - the data storage device storing a program for controlling the processor; and
 - the processor operative with the program to:
 - receive, during a transaction, information relating to customer activity of a customer with a first vendor;
 - receive an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - provide, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;
 - receive a response to the offer; and
 - provide, during the transaction, the at least one item to the customer for free if the response indicates acceptance of the offer.
74. A computer readable medium encoded with processing instructions for implementing a method performed by a computer, the method comprising the steps of:
- receiving, during a transaction, information relating to customer activity of a customer with a first vendor;
 - receiving an indication of at least one item the customer desires to purchase, the at least one item having an associated total price;
 - providing, in response to the received information, an indication of an offer for a subsidy from a second vendor, wherein the offer for the subsidy is an offer for a reduction in price relative to the total price;
 - receiving a response to the offer; and
 - providing, during the transaction, the at least one item to the customer for free if the response indicates acceptance of the offer.

81. A method, comprising the steps of:

receiving an indication that an item has been placed in a shopping cart of a Web site of first vendor,

in which the item has an associated price;

determining whether to provide an offer for a subsidy based on the received indication;

determining an offer for a subsidy from a second vendor,

in which the offer includes a requirement to participate in a transaction with the second vendor;

displaying, during a transaction, an indication of the offer for the subsidy from the second vendor,

in which the offer is displayed via a Web page;

receiving input representing a click of a button on the Web page;

determining, from the input, a response to the offer for the subsidy; and

selling, during the transaction, the item for a second price if the response indicates that the offer is accepted,

in which the second price is less than the price of the item.

APPENDIX C
CHART SHOWING CLAIM DEPENDENCIES

Claims 1 - 42, 49 - 65, 72 - 79, 80 and 81 are pending

Claims 1, 36, 41-42, 49, 51- 56, 60 - 65, 72 - 74 and 81 are independent.

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